

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

IN RE APRIA DATA BREACH LITIGATION

Master File No. 1:23-cv-01003-JPH-KMB

**DEFENDANT APRIA HEALTHCARE LLC’S PARTIAL MOTION TO DISMISS
UNDER FEDERAL RULE OF CIVIL PROCEDURE 12(B)(3)**

Defendant, Apria Healthcare LLC (“Apria”), by counsel and pursuant to Federal Rule of Civil Procedure 12(b)(3), moves to dismiss all claims brought by the following Plaintiffs: Lisa Smith, Robert Herrera, Suzanne Cuyle, Leonardo DePinto, Joel Kamisher, Debbie Bobbitt, Elissa Stroffolino, Amy Clark, Reginald Reese, Rita May, Tammie Creek, Sonya Albert, Paul Kramer, Colleen Rickard, Kristina Accardo, Roger Winstanley, and Bonnie Bennett. By signing Apria’s Sales, Service and Rental Agreement (“SSRA”), each of these Plaintiffs agreed to arbitrate the disputes before this Court on an individual basis rather than as a putative class. Apria also moves to dismiss all claims brought by Plaintiff Chad Hohenbery, who by signing Apria’s Employment Agreement, likewise agreed to arbitrate the disputes before this Court on an individual basis rather than as a putative class.¹ Because arbitration outside of this District is appropriate, dismissal under Fed. R. Civ. P. 12(b)(3) is the proper procedural mechanism to dispose of the foregoing Plaintiffs’ claims.

¹ At this time, Apria does not seek dismissal as to Plaintiffs Dottie Nikolich, Sabrina Munoz, and Hilary French based on arbitration agreements.

Contemporaneously with this Motion, Apria files its Brief in Support of its Partial Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(3), which Apria incorporates into this Motion as though fully set forth herein.

Also contemporaneously with this Motion, Apria files the following exhibits, as cited in Apria's supporting Brief:

Exhibit No.	Description
1	Compilation of Evidentiary Citations to Plaintiffs' Signatures
2	Declaration of Jim Sylte
3	Declaration of Malessa Dubois
4	Declaration of Lindsey Moon
5	Declaration of Dana Godfrey (re: Plaintiff Bennett)
6	Declaration of Cameron Starck
7	Declaration of Jamie Bell (re: Plaintiff Clark)
8	Declaration of Amy Gideon
9	Declaration of Kerrie Scott
10	Declaration of April Naugle
11	Declaration of Woodrow Esman
12	Declaration of Jerry Heller
13	Declaration of Frank Saucedo
14	Declaration of Wayne Sugden
15	Declaration of Dana Godfrey (re: Plaintiff May)
16	Declaration of Jesse Ballard
17	Declaration of Craig Berndt

18	Declaration of Jamie Bell (re: Plaintiff Smith)
19	Declaration of Nicole Avalos
20	Declaration of Kandette Raether
21	Declaration of Patricia Black
22	Declaration of Brad Tebben
23	Declaration of Gregory Neibarger

WHEREFORE, Defendant Apria Healthcare LLC (“Apria”) respectfully requests that this Court dismiss all claims brought by the following Plaintiffs pursuant to Federal Rule of Civil Procedure 12(b)(3): Lisa Smith, Robert Herrera, Suzanne Cuyle, Leonardo DePinto, Joel Kamisher, Debbie Bobbitt, Elissa Stroffolino, Amy Clark, Reginald Reese, Rita May, Tammie Creek, Sonya Albert, Paul Kramer, Colleen Rickard, Kristina Accardo, Roger Winstanley, Bonnie Bennett, and Chad Hohenbery, and for all other just and appropriate relief.

[E-Signature on the Following Page]

Respectfully submitted,

/s/ John F. McCauley

John F. McCauley, No. 20715-12
Gregory A. Neibarger, No. 22095-49
Jessica Laurin Meek, No. 34677-53
Lindsay A. Llewellyn, No. 32670-49
Zechariah Lee Banks, No. 37506-49
DENTONS BINGHAM GREENEBAUM LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204
(317) 635-8900
(317) 236-9907 (fax)
john.mccauley@dentons.com
greg.neibarger@dentons.com
jessica.meek@dentons.com
lindsay.llewellyn@dentons.com
zechariah.banks@dentons.com

Colleen Parga, *pro hac vice*
DENTONS BINGHAM GREENEBAUM LLP
3500 PNC Tower
101 S. 5th Street
Louisville, KY 40202
(502)-587-3790
colleen.parga@dentons.com

*Counsel for Defendant,
Apria Healthcare LLC*